

MONTANA NINETEENTH JUDICIAL DISTRICT

LINCOLN COUNTY

RULES OF PRACTICE

(Effective July 1, 2002)



**MONTANA NINETEENTH
JUDICIAL DISTRICT COURT
LINCOLN COUNTY**

Revised, effective July 1, 2002

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SECTION A. SCOPE OF RULES

Rule 10. APPLICATION OF RULES

These rules supplement the Montana Rules of Civil Procedure (M.R.Civ.P.) and the Montana Uniform District Court Rules (UDCR). In the event of a conflict between these rules and M.R.Civ.P. or UDCR, the latter shall control. Likewise, any specific order or decree shall take precedence over these rules in the event of a conflict. The Court retains the right to give relief from these rules when justice requires. These rules are effective July 1, 2002, and shall remain in effect until revised.

SECTION B. COURT PROCEDURES, JURY TERMS, AND SCHEDULES

Rule 20. NEWS COVERAGE

The Court recognizes the important role the media plays in our free society. Nevertheless, it is essential that persons who appear before the Court, either as civil litigants or as criminal defendants, receive a fair trial, uninfluenced by media coverage. In order to provide for reasonable media access to court proceedings, while at the same time protecting the dignity and rights of persons who are appearing before the Court, the following procedures shall be observed:

A. Broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court, or during recesses between sessions, shall be allowed only with permission of the Court.

B. Unless otherwise specifically authorized, all equipment used and persons using it shall remain behind the bar.

C. No flash lights, lighting equipment, or large microphones may be used without permission of the Court.

D. Photographers, television cameras, and recording devices, when allowed, shall remain stationary and shall be used in a manner that does not disrupt the proceedings.

E. Jurors may not be photographed or televised.

Rule 21. FORMS AVAILABLE

Any form discussed herein may be obtained either from the Clerk or from the Court Administrator.

Rule 22. JURY TERMS--CRIMINAL

A. There shall be four criminal jury terms per year, designated as the Spring, Summer, Fall and Winter criminal jury terms, and they shall commence on the first Tuesday of March, June, September, and December, respectively, unless otherwise ordered by the Court. The order of cases to be tried during the next jury term shall be set by the Court following the final pretrial conference, which will generally be held approximately 30-45 days prior to the start of each jury term.

B. Under extraordinary circumstances, such as a Defendant being incarcerated pending trial and unable to post bail, the impending death or departure of a necessary witness, speedy trial problems, etc., either the State or a Defendant may move for a priority trial setting in advance of the next scheduled jury term, and the Court will give due consideration to such requests.

C. A Defendant who enters a plea of not guilty less than 80 days prior to the next scheduled trial term will be scheduled for trial during the following jury term, unless otherwise requested by either the State or the Defendant, and it appears to the Court that investigation, discovery, and pretrial proceedings could be completed, and the parties could be prepared for trial, prior to the next scheduled jury term.

D. Continuances will be granted only upon a showing of good cause.

E. If a Defendant changes a not guilty plea to a guilty plea pursuant to a Plea Agreement, and the Court later rejects the Plea Agreement, the case may be scheduled for trial as soon as a trial can be fit into the Court's schedule.

Rule 23. JURY TERMS--CIVIL

A. There shall be two civil jury terms per year, designated as the Spring and Fall civil jury terms, and they shall commence on the first Tuesday of April and October, respectively, unless otherwise ordered by the Court. The order of cases to be tried during each civil jury term shall be set by the Court following the pretrial conference which will generally be held approximately 45 days prior to the start of the next jury term.

B. Under extraordinary circumstances, such as the impending death or departure of a witness, numerous expert or out-of-town witnesses, a particularly lengthy or complex trial, etc., either party may request a priority or certain trial setting, and the Court will give due consideration to such requests.

C. Continuances will be granted only upon a showing of good cause.

Rule 24. LAW AND MOTION SCHEDULE

A. Law and Motion is designed to handle routine matters which do not require extensive testimony or argument. Unless it falls on a holiday or Law and

Motion is rescheduled by the Court, Law and Motion matters will be heard each Monday at these times:

1. 9:30 a.m. Criminal matters. Sentencing hearings or motions which will require more than 30 minutes of Court time should be scheduled for a separate hearing on a date outside of Law and Motion.
2. 11:00 a.m. Uncontested civil and probate matters
3. 1:30 p.m. Contested motions, requests for temporary orders, etc., requiring less than 30 minutes. Hearings which will require more than 30 minutes of Court time should be scheduled for a date outside of Law and Motion
4. 2:30 p.m. Department of Family Service matters
5. 3:30 p.m. Youth Court matters

B. Unless authorized by the Court, no matter may be set for Law and Motion unless all motions and other documents relevant to the matter to be heard have been filed or lodged with the Clerk of Court by the preceding Friday at 5:00 p.m.

C. Each Monday morning the Clerk will prepare a schedule of matters which have been set for that day's Law and Motion schedule. Cases will generally be called in the order indicated on the schedule. If a party has a reason to be set first or last, the request should be made to the Clerk before entering the courtroom.

D. Emergency, nontestimonial, or self-evident documents requiring the Court's attention may be mailed to or left with the Clerk, with a request that they be brought to the Court's attention. The Judge may decline to sign any such document and direct that it be presented for the Court's consideration during a regularly scheduled Law and Motion calendar.

Rule 25. SHOW CAUSE HEARINGS

Show cause hearings will generally be scheduled during the Court's "contested" calendar at 1:30 p.m. on Monday. Because of time constraints, the Court will rarely be able to accommodate a full-blown hearing with multiple witnesses. The Court may place the parties under oath and conduct a summary hearing, questioning the parties at their respective tables. If an attorney is retained by the responding party, the attorney should contact counsel for the moving party as much in advance of the show cause hearing as possible to see if a resolution can be worked out without going to Court.

Rule 26. JUROR QUESTIONNAIRES, JURY SERVICE

A. The Jury Commissioner will summon by letter sufficient jurors to meet the anticipated needs of the trial. Juries shall be called for a particular day and may serve in any cause scheduled for trial that day. Jurors will serve on a "one day, one trial basis," which means that any juror who is summoned for service for a particular trial, and who appears, will be excused from service for the remainder of that term. Jurors who are excused from service at their own request will not be exempt from further jury service during the remainder of the term.

B. As soon as practicable after the list of prospective jurors has been finalized for a particular trial, the Clerk will provide counsel with a list of jurors and copies of the juror questionnaires.

Rule 27. NONJURY TRIAL SETTINGS

Nonjury trials and hearings shall be scheduled throughout the year. The procedures which apply to scheduling orders as set forth in Rule 43 apply equally to jury and nonjury trials, except that trial settings for nonjury trials will be set forth in the initial scheduling order, whereas trial settings for jury trial will not be established until the final pretrial conference.

Rule 28. REMINDERS TO THE COURT

It is the Court's desire to make its rulings and render its decisions in a timely manner. In the event the Judge has under advisement any matter for a period of more than sixty (60) days, the parties, individually or jointly, may send the Judge a letter requesting a ruling.

SECTION C. FILES, PLEADINGS, AND DISCOVERY

Rule 30. CLERK OF COURT

A. The Clerk of Court is the custodian of Court files and records. The Clerk shall make such rules allowing files to be taken from her office as she shall see fit, consistent with the applicable statutes and these rules.

B. No file or Court record may be taken from the Clerk's office for more than 5 days without a written order from the Court. No document may be removed from a Court file.

Rule 31. YOUTH COURT RECORDS

Whenever a request is made to review a Youth Court file by anyone except the County Attorney, a youth's attorney, or a probation officer, the Clerk shall first bring the file and the request to the attention of the Judge who shall review the file to determine if it contains any material which is confidential. If such confidential material is contained in the file, the Judge may direct the Clerk to remove it before the file is made available to the requesting party.

Rule 32. PLEADINGS

A. All pleadings shall be personally delivered or mailed to the Clerk for filing. Pleadings should not be sent directly to the Judge.

B. All pleadings, orders, and other papers presented to the Clerk for filing shall be clean and neat in appearance and shall be in conformance with UDCR Rule 1.

C. All pleadings and other papers to be filed shall be on letter size paper. If possible, attachments and exhibits should be reduced to letter size.

D. Pleadings may be single spaced, or double spaced. If single spaced, there shall be a double space between paragraphs. Quotes shall be single spaced and indented. Text should be printed on only one side of each page.

E. The title of all pleadings must be complete, and the complete title shall also be contained in the footer at the bottom of each page. For example, rather than titling a pleading, "Affidavit," it should be titled "Affidavit of John Smith in Support of Plaintiff's Motion for Summary Judgment."

F. Line 1 of the first page of proposed Orders, Decrees, or Judgments presented for the Judge's signature should not contain the name and address of the attorney who is submitting the document for the Court's consideration.

G. Each claim or cause of action contained in a Complaint should be identified as a separate count and should be labeled in such a manner that the nature of the claim is clear. For example: COUNT I—BREACH OF CONTRACT; COUNT II—NEGLIGENCE.

H. A claim which alleges statutory violations must specify which statute or statutes are alleged to have been violated. It is not sufficient to refer generally to an entire Act, such as the Unfair Trade Practices and Consumer Protection Act. Complaints and Answers should be sufficiently detailed to place the opposing party and the Court on notice of what is being alleged.

I. The Clerk may refuse to file documents which do not conform to these rules.

Rule 33. EXHIBITS

A. The Clerk is the custodian of all exhibits.

B. In order to facilitate a smooth flow in the presentation of evidence, exhibits should be exchanged between counsel prior to trial. Attorneys are encouraged to stipulate in advance to any exhibits to

which there is no objection.

C. The Clerk shall mark for identification all proposed exhibits and keep a list of all exhibits and the ruling of the Court thereon. A party or the Clerk may request that a copy of an exhibit be filed in place of the original.

D. After judgment has become final, the Clerk shall notify the attorneys that all exhibits and depositions may be retrieved from the Clerk's office within 30 days. Exhibits and depositions which are not retrieved within 30 days may be destroyed by the Clerk pursuant to a Standing Order from the Court. If the exhibit has historical value, it may be offered to a public museum for preservation. If the exhibit has more than nominal value, it shall be sold and the proceeds credited to the county general fund. Before an exhibit is made available to a museum or auctioned, however, the Clerk shall provide an additional 30 days notice of the need to retrieve the exhibit and the consequences for not doing so.

Rule 34. DEPOSITIONS

A. Pursuant to UDCR Rule 4, depositions and other forms of discovery shall not be routinely filed. When a motion or response is filed which makes reference to deposition testimony, the party filing the motion or response shall submit a copy of the relevant deposition testimony with the motion or response.

B. An attorney who instructs a witness not to answer a question during a deposition may be required to pay the cost of retaking the deposition if the question is later determined by the Court to have been proper. An attorney who engages in bullying, coaching, interrupting, or obstructing during a deposition may be required to pay the cost of retaking the deposition if the offending tactics interfere with the deposition.

RULE 35. INTERROGATORIES, DISCOVERY REQUESTS

A. As with depositions, interrogatories and other types of written discovery shall not be routinely filed. Whenever a motion or response is filed which makes reference to interrogatory answers or other written discovery requests or responses, the party filing the motion or response shall submit the relevant interrogatory answers or discovery requests or responses with the motion or response. In the case of a motion or response based upon a failure to respond, a copy of the unanswered discovery requests shall be filed with the motion or response.

B. Interrogatories and other forms of written discovery may be single spaced, with double spacing between each question or subpart. It is not necessary to leave space for an answer or response.

C. Parties are encouraged to cooperate in the exchange of computer disks if the interrogatories or

written discovery requests are lengthy or complex.

D. The Court will sustain objections to interrogatories and other discovery requests which are

not designed to discover relevant facts pertaining to the case or which are burdensome or unnecessarily complex.

E. Motions to compel responses to written discovery or for protective orders to limit or deny certain discovery will not be considered by the Court unless the motion sets forth the efforts made by the parties to resolve their differences between themselves. It should rarely be necessary for the Court to referee discovery disputes. Sanctions will be considered whenever it appears that a party is obstructing the discovery process and there is not a reasonable basis to believe the party's position is well founded in the law.

Rule 36. TELEFAX FILINGS

Telefax filings are unnecessary unless there is a deadline problem, and they are discouraged as they create extra work for the Clerk of Court's staff. If a document is telefaxed to the Clerk of Court for filing, the following procedure shall be observed:

A. The Clerk shall stamp the document to show the date and time of its receipt. If a document is received after hours or on a weekend or holiday, it shall be considered to have been received at 8:00 a.m. on the first business day thereafter.

B. On the same day the fax is sent, the sender shall mail the original document to the Clerk of Court by first class mail. The Clerk shall file the original (mailed) document, showing the date and time of filing as the date and time the telefax was received.

C. Upon receipt by the Clerk of the mailed document, the Clerk shall remove the faxed copy from the Court file, except for the first page which documents the date and time of the fax filing.

D. If a pleading is faxed to the Clerk, requesting immediate attention by the Judge, a copy must also be faxed to opposing counsel.

Rule 37. DISMISSAL FOR INACTIVITY

Cases will not be continued indefinitely. A case which has been inactive for 12 months or more may be dismissed with or without prejudice by the Court after giving 20 days notice of the intended dismissal.

Rule 38. SIGNATURE STAMP

The Court Administrator shall maintain under lock and key a signature stamp bearing a facsimile of the Judge's signature. On occasions when the Judge is out of the jurisdiction or is otherwise unavailable, the

Judge may authorize the Court Administrator to use the Judge's signature stamp on documents requiring immediate attention by the Court. It shall be necessary to secure the Judge's authorization on every occasion before his signature stamp is used, and the signature stamp shall only be used when it is not

feasible to wait until the Judge returns to the jurisdiction to personally sign the document.

SECTION D. PRETRIAL AND POST-TRIAL PROCEEDINGS – CIVIL

Rule 40. MOTIONS AND BRIEFS

A. When filing of a motion for leave to file an Amended Complaint or Answer or other pleading requiring leave of the Court to file, the moving party shall mail or deliver the original of the proposed pleading to the Clerk to be lodged in the file. If leave to file is granted, the Clerk will then file the original pleading that was previously lodged.

B. Deadlines for filing briefs in support of and opposition to motions are governed by UDCR Rule 2.

C. Unless waived by the parties, oral argument is mandatory for all Rule 56 motions. Parties are encouraged to waive oral argument whenever they believe oral argument would add nothing to the arguments presented in the briefs. The Court may request oral argument even if it has been waived by the parties.

D. When a motion has been fully briefed, the file is brought to the Judge for decision or to schedule oral argument on the motion. If a motion requires a hearing and the parties have not received an order setting the oral argument within 10 days after the final brief has been filed, either party may call the Court Administrator and request that the hearing be scheduled.

E. Motions and briefs in support thereof may be combined in the same document. When pleadings are combined, the title and footer should contain the complete name of the combined document.

F. If a party wishes the Court to take immediate action on a motion, the motion should state that opposing counsel has been contacted and has no objection to the motion. When filing a motion to which the other party does not object and which requires immediate action, counsel should so advise the Clerk's office, in order that the file can be immediately brought to the Court's attention. If the other party objects, or if there is no indication whether the other party objects, the file will not be brought to the Court's attention until an answer brief has been filed or the time for doing so has expired.

G. All motions should be accompanied by a

separate proposed order. Motions and orders should not be combined in the same document, as the pleading cannot be filed until the order is signed.

Rule 41. SERVICE OF PROCESS AND PAPERS

A. Whenever personal service of a pleading is required, the party who caused the service to be performed shall immediately file the proof of service as soon as it is returned by the process server.

B. Whenever the Clerk is required to mail copies of documents to parties or counsel, the party who is making such service necessary shall furnish stamped envelopes to the Clerk, addressed to the parties who must be served.

Rule 42. SCHEDULING AND CONTINUING HEARINGS ON MOTIONS

A. Whenever possible, opposing counsel should be contacted before a hearing on a motion is scheduled. If counsel cannot agree upon a hearing date, the hearing may be scheduled for Law and Motion two Mondays or more after the motion is filed.

B. Hearings on motions may be continued by the Court on its own initiative. The parties may stipulate to continue a hearing until a later Law and Motion date, or any party may file a written motion requesting a continuance. All such motions to continue must be in writing, set forth the reason for such continuance, and state whether or not the opposing party concurs with the continuance.

Rule 43. SCHEDULING ORDERS, TIME LIMITATIONS

A. After all Defendants have answered, the Court will enter a scheduling order setting forth the following deadlines:

1. The date for any responsive pleadings by any party.
2. The date by which witnesses (expert and non-expert) must be identified.
3. The deadline for completion of discovery.
4. The deadline for filing and arguing pretrial motions.
5. The deadline for participating in a settlement conference or mediation conference.
6. The date for pre-trial conference.
7. For nonjury trials, the trial date.

B. Because of the way the Court schedules jury trials, extensions of intermediate deadlines frequently means the trial will need to be moved back to the next term.

C. When a jury trial has been demanded, the exact trial setting will be established at the pretrial conference. Counsel will be expected to advise the Court at the pretrial conference of the anticipated length of trial, any dates during the term when they will be unavailable, and whether any unique circumstances exist which require a priority trial setting or a date certain trial setting.

D. The Court may impose whatever time restrictions it deems appropriate according to the needs and circumstances of the particular case.

E. Civil jury trials are generally scheduled in five day blocks. If a trial is anticipated to require more than five days to try, the parties should advise the Court of that fact as early in the proceedings as possible so a special block of time can be set aside for the trial.

Rule 44. PRETRIAL CONFERENCE, PRETRIAL ORDER

A. Unless otherwise ordered by the Court, a pretrial conference shall be held in all contested civil cases.

B. The pretrial order is more than a mere formality. Failure to give adequate attention to the pretrial order can create problems, both at trial and in an appeal. Counsel are expected to comply with UDCR Rule 5 in regard to the preparation of a pretrial order.

Rule 45. BRIEFS

A. All briefs shall be filed with the Clerk, who shall stamp the date of filing on the brief and deliver all briefs on the pending motion or issue to the Judge as soon as all answer and reply briefs have been filed or the time has expired for doing so.

B. Briefs shall be concise and to the point, but as thorough as the complexities of the issues demand. It is not necessary to attach photocopies of cited cases to a brief, unless the citation is from a jurisdiction whose reports are not readily available.

C. Rambling, verbose, inflammatory, or unintelligible briefs or pleadings may be ordered stricken by the Court.

Rule 46. MOTIONS IN LIMINE

The deadline for filing motions in limine shall be governed by the Court's scheduling order as it applies to the filing of motions generally. When, however, counsel could not have anticipated the circumstances giving rise to such motion prior to the motion deadline, the Court will consider motions in limine at any stage of a trial.

Rule 47. SETTLEMENT CONFERENCES

In all nonjury DV (civil) and all DR (domestic relations) cases, the Scheduling Order will contain a requirement that counsel and their clients must meet in a face to face settlement conference in the jury room in an effort to settle the case without the necessity of a trial. In such cases, the following procedure shall be followed:

A. Counsel shall consult among themselves and determine a date and time for the settlement conference, and one of them shall be appointed to contact the Court Administrator (293-8120) to reserve the jury room.

B. Counsel and their clients must attend the settlement conference in person and engage in a good faith effort to resolve the dispute. All parties necessary to effect a settlement shall attend the settlement conference.

C. At the conclusion of the settlement conference, one of the counsel shall notify the Court Administrator of the results of the settlement conference.

D. Nothing that is said or done at the settlement conference may be used as evidence in any subsequent proceeding.

E. Failure to participate in a settlement conference may result in the Court vacating the trial and rescheduling it after the settlement conference has been held.

Rule 48. MEDIATION CONFERENCES

The parties may request, or the Court on its own initiative may order, a mediation conference in any case. A mediation conference is a settlement conference presided over by a mediator. When a mediation conference is ordered, the following procedure shall be followed:

A. The parties shall agree upon a mediator, or if they are unable to do so, the Court will appoint one.

B. If a mediation conference is ordered, the parties must cooperate and participate fully in the process. Unless the parties and the mediator concur, or the Court authorizes in writing, all parties and agents necessary to effect a settlement must personally attend any mediation conference.

C. No later than five days prior to the mediation conference, the parties must submit a confidential settlement memorandum to the mediator, setting forth all relevant matters that pertain to issues of liability and damages, as well as any unique issues or problems raised in the case. The memorandum will be confidential and will not be shared with the opposing party or the Court.

D. The mediator shall file a report with the Court within five days after the settlement conference, advising the Court whether or not the parties

cooperated in the mediation conference and whether or not a settlement was achieved.

E. Unless the Court orders otherwise, any expenses related to a Court-ordered settlement conference will be shared equally by the parties.

F. Nothing that is said or done at the mediation conference may be used as evidence in any subsequent proceeding.

Rule 49. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENTS

In all matters in which the Court must enter Findings of Fact and Conclusions of Law, at least five days prior to the scheduled trial or hearing, the parties shall file serve proposed findings of fact and conclusions of law. Failure to file proposed findings of fact and conclusions of law in a timely manner shall be cause for appropriate sanction including removal of the case from trial calendar, dismissal or granting of a judgment, precluding the offending party from presenting evidence or objecting to evidence submitted by the other party, or such other action as the Court deems appropriate. *See*, UDCR Rule 8. Leave to file post-trial amended and supplemental findings of fact and conclusions of law will not be freely granted.

SECTION E. PRETRIAL AND POST-TRIAL PROCEEDINGS-CRIMINAL

Rule 50. GENERALLY

Whenever a Defendant is addressed by the Court or wishes to address the Court, he or she shall rise and speak or respond in an appropriately respectful manner.

Rule 51. ARRAIGNMENTS

A. Prior to appearing in Court for an arraignment, a Defendant shall have reviewed the Information with his attorney. If the Defendant will be entering a plea of not guilty, he or she shall sign a document entitled, "Acknowledgment of Rights and Plea of Not Guilty." At the arraignment, the Court will determine if the information contained in the aforementioned document is true and correct, and if so, the Court will accept the plea and enter a scheduling order.

B. If a Defendant intends to enter a plea of guilty at his or her arraignment, the same procedure described above shall be followed, except the Defendant shall sign a document titled, "Acknowledgment of Rights, Waiver, and Plea of Guilty." If the Court accepts the Defendant's plea, the matter will be set for sentencing as discussed below.

C. If a Defendant has previously entered a plea of not guilty and wishes to change his or her plea, the

Defendant shall sign a document entitled, "Acknowledgment of Rights, Waiver, and Change of Plea." If the Court accepts the Defendant's change of plea, the matter will be set for sentencing.

D. Before accepting a plea of guilty, the Court will require that the necessary elements of the offense are established by sworn testimony from the Defendant. It will be the Defendant's attorney's responsibility to elicit the testimony necessary to satisfy the Court that the elements of the crime have been satisfied. If the Court is not satisfied that the necessary elements of the offense have been established after questioning by Defendant's attorney, the Court may question the Defendant regarding the offense.

E. If the Court is not satisfied that the Defendant is guilty of the crime or is not entering the plea voluntarily, the plea will not be accepted, and the case will be set for trial.

F. Alford pleas will be accepted only in instances where the Defendant legitimately is unable to recall his or her actions (due to intoxication or otherwise), or the Defendant's mental state at the time of the commission of the alleged offense is in question, but the Defendant nevertheless believes that he or she is guilty of the offense charged. Alford pleas will not be accepted simply to permit a Defendant to escape an acknowledgment of wrongdoing. If a Defendant honestly believes he or she did not commit the offense, an Alford plea is not appropriate.

Rule 52. SCHEDULING ORDERS IN CRIMINAL CASES

If a Defendant pleads not guilty at the arraignment, the Court will enter a scheduling order setting forth the following deadlines:

1. A date for the completion of discovery.
2. Deadline by which motions are to be filed and noticed for hearing.
3. Omnibus hearing date.
4. Final Pretrial Conference date.

Rule 53. OMNIBUS HEARINGS

A. In all criminal cases in which a not guilty plea has been entered, an omnibus hearing will be conducted at a date and time specified by the Court. Omnibus hearings are generally held the last Tuesday of each month.

B. Prior to the omnibus hearing, counsel shall complete and sign an Omnibus Hearing Disclosure Statement, which shall be presented to the Judge or special master at the omnibus hearing.

C. The Defendant is not required to be present at

the omnibus hearing unless otherwise ordered by the Court.

Rule 54. FINAL PRETRIAL CONFERENCE

A. A final pretrial conference will be held in all criminal cases that remain scheduled for trial after the omnibus hearing. The final trial calendar will be established after pretrial conferences have been conducted in all pending criminal cases to be scheduled for trial during that term.

B. The Defendant is required to be present at the final pretrial conference unless otherwise ordered by the Court.

Rule 55. SENTENCING, PLEA AGREEMENTS

A. In most cases where there has been a conviction or a plea of guilty, a presentence investigation will be ordered from the Adult Parole and Probation Office. A presentence investigation may be waived in extraordinary circumstances.

B. Plea Agreements, and the Court's acceptance of same, shall be governed by § 46-12-211, MCA.

SECTION F. TRIAL PROCEDURES

Rule 60. SIX-PERSON JURIES

Pursuant to § 3-15-106, MCA, in all civil actions where the relief sought is less than \$10,000.00, and a jury trial has been demanded, the jury shall consist of six persons. In all other civil cases, the parties may stipulate to six person juries.

Rule 61. PROPOSED JURY INSTRUCTIONS AND VERDICTS

A. Upon request, the Court will provide any pattern jury instruction from the MPI or MCJI pattern jury instruction books. When submitting proposed jury instructions, counsel shall, at the same time, indicate which pattern instructions, if any, they wish the Court to give.

B. All proposed jury instructions and verdict forms must be delivered to the Court in duplicate (an original and one copy), and a copy served upon all opposing parties, no later than five days prior to the scheduled trial. Thereafter, additional instructions may be allowed in the Court's discretion according to the needs of the case.

C. Instructions to the jury shall be on 8½" x 11" paper. Copies of the jury instructions (but not the original) must contain a citation of authorities at the bottom of the instruction as well as an indication of the party on whose behalf the instruction is requested, and the number of the proposed instruction.

D. Proposed verdict forms must be submitted by each party at the same time they submit their proposed jury instructions.

Rule 62. NOTE TAKING BY JURORS

Jurors will be permitted to take notes unless the Court orders otherwise. No juror shall be required to take notes. Jurors' notes shall be taken in a notebook that can be closed, and the juror's numbers shall be placed on the outside cover of the notebook. Jurors' notebooks shall be collected by the bailiff at the end of

each court day and returned to the jurors at the beginning of the next day. Jurors shall be allowed to have their notes during their deliberations.

Rule 63. VOIR DIRE

A. The length of voir dire examination shall not exceed 90 minutes per side without prior leave of Court.

B. Except by permission of the Court, only one attorney for each party will be permitted to question the prospective jurors on voir dire.

C. The only proper purpose of voir dire is to select a panel which will fairly and impartially hear the evidence presented and render a just verdict. The Court will discourage counsel from:

1. Asking questions of an individual juror that are susceptible of being asked collectively.
2. Asking questions covered by and answered in the juror questionnaire.
3. Repeating questions that have been asked and answered.
4. Using voir dire for the purpose of attempting to instruct the jury on the law.
5. Using voir dire for the purpose of arguing the case.
6. Asking a juror what his/her verdict might be under any hypothetical situation, based upon expected evidence or otherwise.

Rule 64. OPENING STATEMENTS

Counsel are reminded that opening statements are not the time to make arguments to the jury. The purpose of opening statements is to acquaint the jury with the facts as the attorneys believe the evidence will prove them to be.

Rule 65. EXAMINATION OF WITNESSES

A. Except by permission of the Court, only one attorney on each side will be permitted to examine or

cross-examine the same witness. Only the attorney who examines or cross-examines a witness will be permitted to object to questions put to that witness.

B. Objections shall be stated succinctly and without argument or discussion unless requested by the Court. Offers of proof must be made outside of the presence of the jury.

Rule 66. DISCHARGE OF WITNESSES

A party who has subpoenaed a witness may discharge that witness before his testimony only by leave of the Court. If the adverse party desires such witness to remain, he must procure the witness's further attendance by subpoena or order of the Court and shall pay the witness's subsequent fees.

Rule 67. CLOSING ARGUMENTS

The Court may limit the amount of time available for closing arguments according to the needs of the case. Plaintiff's final closing argument is for the purpose of rebutting the arguments of opposing counsel and may not be used to introduce new matters.

Counsel shall observe the following rules during closing arguments:

1. Counsel may not misstate the evidence or the law.
2. Counsel may not argue facts that are not in evidence.
3. Counsel may not state their personal belief as to the justice of their cause.
4. Counsel may not personally vouch for the credibility of any witness.
5. Counsel may not appeal to the passions or prejudices of the jury.
6. Counsel may not suggest the presence or absence of insurance.

SECTION G. DISSOLUTIONS

Rule 70. OTHER RULES APPLICABLE, GENERALLY

A. Except as otherwise provided herein, the Court's procedural rules generally applicable to civil matters will also apply to dissolution actions.

B. Counsel are reminded that contested dissolution proceedings are emotional disputes, and if not handled with appropriate delicacy, they can leave permanent scars on litigants, and more important, on their children. In the heat of battle divorce clients may demand that their counsel take a position or employ a

tactic that will work to the disadvantage of that client. Lawyers are expected to maintain client control and not pursue a "scorched earth" policy merely because their client is demanding such an approach.

Rule 71. FINANCIAL AFFIDAVITS

A. In all dissolution actions in which child support or maintenance are issues, a financial affidavit must be completed and filed by the Petitioner at the time of filing the Petition or as soon thereafter as practicable. A copy of Petitioner's financial affidavit must be served upon the Respondent, who must in turn file a completed financial affidavit, with a copy to

Petitioner, within 20 days thereafter. Financial affidavit forms may be obtained from the Clerk of Court.

B. After filing the required financial affidavits, counsel shall calculate the nonresidential parent's child support obligation in accordance with the Montana Child Support Guidelines and shall file a copy of a proposed interim child support order, together with a copy of the child support worksheet by which the child support figure was derived. If opposing counsel disagrees with the child support figure thus calculated, he or she may file his or her own child support worksheet and proposed interim child support order. It is important that adequate child support payments be commenced as soon as possible after a separation.

Rule 72. TEMPORARY CHILD SUPPORT

A. The welfare of the parties' children is of paramount importance. Accordingly, parties will be expected to cooperate in making arrangements for the voluntary payment of temporary child support until a child support order can be entered.

B. If the parties are unable to agree upon the amount of temporary child support, the Court will entertain an emergency petition for a temporary child support order.

Rule 73. DOCUMENTS TO BE FILED IN DISSOLUTION CASES

A. Parties are reminded of the duty to file a preliminary disclosure of assets and liabilities pursuant to § 40-4-252, MCA, and to file a final disclosure no later than 45 days before the first assigned trial date pursuant to § 40-4-253, MCA.

B. A Proposed Parenting Plan, making provision for the items recited in § 40-4-234, MCA.

Rule 74. PAYMENT OF CHILD SUPPORT

A. Except in cases where child support is paid through automatic withholding, child support payments must be mailed to the residential parent in care of the Clerk of Court at the following address:

Clerk of District Court
Child Support Department
512 California Avenue
Libby, MT 59923

B. Child support payments shall be made payable to the residential parent.

C. Whenever a party is receiving AFDC or CSED services, counsel are reminded that § 40-5-201, MCA, et seq. contains provisions that should be reviewed with your client.

SECTION H: ATTORNEYS

Rule 80. REPRESENTATION, WITHDRAWAL

A. Attorneys not admitted to practice law in Montana will not be heard unless they associate with a licensed Montana attorney.

B. No attorney may withdraw from a case, civil or criminal, except with consent of the client or by leave of Court after notice served on the parties and opposing counsel. See § 37-61-404, MCA and UDCR Rule 10.

C. Until six months after the time for appeal from a final judgment or decree, unless earlier relieved, it shall be presumed that counsel of record continue to represent the parties. Thereafter, service upon a party must be accomplished in accordance with Rule 4(D) M.R.Civ.P., provided, however, that a courtesy copy of any pleading to be served upon a formerly represented party should be mailed to the party's last counsel of record.

Rule 81. ATTORNEY FEES

Attorney fees should not be requested unless authorized by statute, case law, or contract. In such cases, the authority for requesting an award of attorney fees should be specified. When attorney fees are recoverable and are awarded, the following procedure shall be followed:

A. If an award of attorney fees is justified under the law and deemed appropriate by the Court, the Court will recite in its Judgment, Order, or Decree that attorney fees are awarded, and the party to whom attorney fees are awarded must file an affidavit in support of the requested fee within 10 days. If no such affidavit is filed within 10 days, or there is no request for additional time in which to file the affidavit (also within 10 days), the attorney fee award shall be deemed to be waived.

B. Within 10 days after service of the affidavit in support of the attorney fee claim, the opposing party may file a written objection, setting forth in detail the items to which there is an objection and the grounds

therefore. If no objection is filed within 10 days, or there is no request for additional time in which to file same (also within 10 days), any objection to the claimed fee shall be deemed to be waived.

C. If a written objection to a claimed fee is filed within the time provided, the Court will review the claim and objection and determine whether it believes a hearing on the claim and objection is necessary. If the Court determines that no hearing is necessary, the Court will issue a ruling awarding fees in the amount it deems to be appropriate. The Court may schedule a hearing on attorney fees on its own initiative, and either party may request a hearing when they file their claim or objection, although the Court reserves the right to deny such request.

**Rule 82. COURT APPOINTED COUNSEL,
COMPENSATION AND EXPENSES**

Whenever it is necessary for the Court to appoint legal counsel outside of the indigent defense contract, the following rules shall apply:

A. Fees shall be billed at the rate of \$50 per hour, unless otherwise ordered by the Court.

B. Counsel shall maintain time records contemporaneous with the work performed, and at the end of each month, counsel shall submit a claim to the Court Administrator, detailing whatever work has been performed on behalf of the client during the preceding month.

C. Billing statements shall be rounded off to the nearest tenth of an hour.

D. Claims for legal work performed during the month of June must be submitted before June 25th, as that is the last date on which claims for the fiscal year can be processed. Claims submitted for a fiscal year after that date are not reimbursable by the State, and will therefore not be paid.

E. Any expense which exceeds \$100.00 requires prior approval from the Court.

DATED July 1, 2002.

s/Michael C. Prezeau
MICHAEL C. PREZEAU